

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 61, “Water Quality Standards,” Iowa Administrative Code.

The proposed amendment will provide water quality certification pursuant to Section 401 of the federal Clean Water Act (33 U.S.C. Section 1341) for U.S. Army Corps of Engineers’ Nationwide Permits (NWP) and the associated conditions and definitions.

Section 404 of the Clean Water Act (CWA) requires a permit from the Corps of Engineers (Corps) for the discharge of dredged or fill materials into the nation’s waters. Section 401 of the CWA requires that before the Corps can issue a Section 404 permit, the state water quality agency must certify that the proposed activity will not violate state water quality standards.

Section 404 authorizes the Corps to issue general permits on a state, regional or nationwide basis for categories of activities where such activities will have minimal adverse effects. The Corps has used its general permit authority to issue a number of general permits on a nationwide basis (i.e., NWPs). General permits, including NWPs, can be issued for a period not exceeding five years, and a state water quality agency must provide Section 401 certification for a Section 404 general permit before the general permit is valid for that particular state. The Commission previously provided Section 401 certification for the existing NWPs and four regional permits. These permits are referenced in paragraph 61.2(2)“g.”

The Corps issued a notice of intent to reissue the existing NWPs, General Conditions and definitions with some modifications. The Corps will allow one NWP to expire and not be reissued. This NWP was never used in Iowa. The Corps will issue two new NWPs and two new general conditions. The Rock Island District deleted a Regional Condition to be used within the state of Iowa that has been incorporated into the NWPs at the Corps Headquarters level. This amendment would provide Section 401 certification for the modified and new NWPs, conditions and definitions.

Any interested person may file written comments on the proposed amendment on or before March 13, 2012. Written comments or questions regarding the proposed amendment or the Corps’ NWPs should be directed to Christine Schwake, Department of Natural Resources, 502 East 9th Street, Des Moines, Iowa 50319-0034; telephone (515)281-6615; fax (515)281-8895; E-mail christine.schwake@dnr.iowa.gov.

Oral or written comments will also be accepted at a public hearing to be held on March 13, 2012, at 1 p.m. in the Fifth Floor West Conference Room of the Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa.

The rule making and related documents were submitted to the Governor’s Office on November 10, 2011. The Department was notified on November 16, 2011, that the rule had been cleared after revision.

After analysis and review of this rule making, there should be a positive impact on jobs. This amendment is intended to have a positive impact on small businesses. The Iowa certification of the NWPs will reduce the regulatory burden on permit applicants by allowing these businesses to avoid individual certifications for their projects. The adoption of this amendment will allow projects to proceed more rapidly and should therefore allow more projects to be undertaken and completed, thus boosting economic activity. If the DNR delays this rule making to await the finalization of the federal rules, there will be a period in which businesses will need to obtain individual certification of their projects by the state, which will cause delay in project implementation.

This amendment is intended to implement Iowa Code chapter 455B, division III, part 1.

The following amendment is proposed.

Amend paragraph **61.2(2)“g”** as follows:

g. This policy shall be applied in conjunction with water quality certification review pursuant to Section 401 of the Act. In the event that activities are specifically exempted from flood plain development permits or any other permits issued by this department in 567—Chapters 70, 71, and 72, the activity will be considered consistent with this policy. Other activities not otherwise exempted will be subject to 567—Chapters 70, 71, and 72 and this policy. United States Army Corps of Engineers (Corps) nationwide permits 3, 4, 5, 6, 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 27, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, ~~and 50, 51, and 52~~ as well as Corps regional permits 7, 27, 33, and 34 as promulgated ~~February 16, 2011~~ date to be determined upon filing, are certified pursuant to Section 401 of the Clean Water Act subject to the following Corps regional conditions and the state water quality conditions:

(1) Side slopes of a newly constructed channel will be no steeper than 2:1 and planted to permanent, perennial, native vegetation if not armored.

(2) Nationwide permits with mitigation may require recording of the nationwide permit and pertinent drawings with the registrar of deeds or other appropriate official charged with the responsibility for maintaining records of title to, or interest in, real property and may also require the permittee to provide proof of that recording to the Corps.

(3) Mitigation shall be scheduled prior to, or concurrent with, the discharge of dredged or fill material into waters of the United States.

~~(4) For discharges of dredged or fill material resulting in the permanent loss of more than 1/10 acre of waters of the United States (including jurisdictional wetlands), a compensatory mitigation plan to offset those losses will be required. In addition, a preconstruction notice to the Corps of Engineers in accordance with general condition 27 will be required.~~

~~(5)~~ (4) For newly constructed channels through areas that are unvegetated, native grass filter strips, or a riparian buffer with native trees or shrubs a minimum of 35 feet wide from the top of the bank must be planted along both sides of the new channel. A survival rate of 80 percent of desirable species shall be achieved within three years of establishment of the buffer strip.

~~(6)~~ (5) For single-family residences authorized under nationwide permit 29, the permanent loss of waters of the United States (including jurisdictional wetlands) must not exceed 1/4 acre.

~~(7)~~ (6) For nationwide permit 46, the discharge of dredged or fill material into ditches that would sever the jurisdiction of an upstream water of the United States from a downstream water of the United States is not allowed.

~~(8)~~ (7) For projects that impact an outstanding national resource water, outstanding Iowa water, fens, bogs, seeps, or sedge meadows, an individual Section 401 Water Quality Certification will be required (Iowa Section 401 Water Quality Certification condition).

(9) (8) For nationwide permits when the Corps' district engineer has issued a waiver to allow the permittee to exceed the limits of the nationwide permit, an individual Section 401 Water Quality Certification will be required (Iowa Section 401 Water Quality Certification condition). Written verification by the Corps or 401 certification by the state is required for activities covered by these permits as required by the nationwide permit or the Corps, and the activities are allowed subject to the terms and conditions of the nationwide and regional permits. The department will maintain and periodically update a guidance document listing special waters of concern. This document will be provided to the Corps for use in determining whether preconstruction notices should be provided to the department and other interested parties prior to taking action on applications for projects that would normally be covered by a nationwide or regional permit and not require preconstruction notice under nationwide permit conditions.